

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1281 Department of Management Services
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Moore	Harrington

SUMMARY ANALYSIS

Current law regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology. DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. Where state laws don't apply to local governments, such entities may develop their own policies regarding procurement.

The bill creates the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of the state and determining where inconsistencies in such laws and policies exist. The bill requires the task force to submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

The bill may have an indeterminate negative fiscal impact on the state. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.² DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁴

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process;⁵ however, certain contractual services and commodities are exempt from this requirement.⁶

State Term Contracts

Current law authorizes DMS to establish purchasing agreements and procure state term contracts for commodities and contractual services using the procurement methods described above.⁷ These contracts are generally developed for purchases of commodities and services that are ongoing and common to multiple state agencies. State agencies are required to use state term contracts when they are available.⁸ Other eligible users, such as counties, cities, and school districts may also utilize state term contracts.⁹

¹ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

² See ss. 287.032 and 287.042, F.S.

³ *Id.*

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁶ See s. 287.057(3), F.S.

⁷ Section 287.042(2)(a), F.S.

⁸ Section 287.056(1), F.S.

⁹ *Id.*

Other Procurement Policies

Chapter 287, F.S., includes various other requirements and policies applicable to procurement for state or local government entities, including:

- Requiring state agencies, municipalities, political subdivisions, school districts, and school boards to procure professional architectural, engineering, landscape architectural, or survey and mapping services using a qualifications-based procedure when such services exceed a certain cost;¹⁰
- Requiring state agencies, universities, colleges, school districts, or other political subdivisions of the state (except counties and cities) to provide a preference to Florida businesses;¹¹
- Allowing counties, cities, community colleges, and district school boards to set aside up to 10 percent or more of procurement funds for the purpose of entering into contracts with minority business enterprises;¹²
- Prohibiting state agencies and political subdivisions from accepting bids from or awarding contracts to a person or entity convicted of a public entity crime under certain circumstances;¹³ and
- Prohibiting state agencies from accepting bids from or awarding contracts to a person or entity that has been found by a court to have committed discrimination on the basis of race, gender, national origin, disability, or religion under certain circumstances.¹⁴

Where state laws don't apply to local governments, such entities may develop their own policies regarding procurement.

Effect of Proposed Changes

The bill creates the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of the state and determining where inconsistencies in such laws and policies exist. The task force must be composed of the following 11 members:

- The Secretary of DMS or his or her designee, who must serve as chair.
- Six members appointed by the Governor, as follows:
 - One county government official.
 - One municipal government official.
 - One district school board member.
 - Three representatives of the business community.
- Two members appointed by the Speaker of the House of Representatives, as follows:
 - A member of the House of Representatives.
 - An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.
- Two members appointed by the President of the Senate, as follows:
 - A member of the Senate.
 - An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.

The bill requires the task force members to be appointed by July 31, 2017. The task force must meet to establish procedures for the conduct of its business and to elect a vice chair by August 31, 2017. The task force must meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All task force meetings must be held in Tallahassee, unless otherwise decided by the task force. No more than two meetings may be held in other locations for the purpose of taking public

¹⁰ Consultants' Competitive Negotiation Act, s. 287.055, F.S.

¹¹ Section 287.084(1)(a), F.S.

¹² Section 287.093, F.S.

¹³ Section 287.133(2)(b), F.S.

¹⁴ Section 287.134(2)(b), F.S.

testimony. DMS is required to provide administrative and technical support for the task force, and task force members must serve without compensation or reimbursement for per diem or travel expenses.

The bill requires the task force to submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

The task force is terminated on December 31, 2018.

B. SECTION DIRECTORY:

Section 1. amends s. 287.057, F.S., relating to procurement of commodities or contractual services.

Section 2. provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DMS because the agency is required to provide administrative and technical support to the task force.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.